

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5506 of 1984

Date of decision:10-1-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NADIAD TAL KHARID VECHAN SANGHLTD

Versus

STATE OF GUJARAT

Appearance:

MR ND NANAVATI for Petitioner
Ms. P. S. Parmar for Respondent No. 1
MR SK JHAVERI for Respondent No. 4,17
None present for other respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/01/97

ORAL JUDGEMENT

The petitioner - Nadiad Taluka Kharid Vechan Sangh Ltd., - has filed this petition challenging the order dated 24th August, 1984 made by respondent No.1 in Revision Application under section 155 of the Gujarat Cooperative Societies Act, 1961, reversing the order dated 22nd September, 1983 passed by respondent No.3.

2. The facts of the case, in brief, are that the petitioner in its general meeting held on 30th December, 1982 passed resolution with requisite majority for removal of respondents No.4 to 17 from the membership of the petitioner Society, in exercise of the powers under section 36 of the Gujarat Cooperative Societies Act, 1961 ('the Act' for short), subject to obtaining approval from the District Registrar as provided in the proviso to the said section. The petitioner has come up with the case that the proposal was forwarded to the District Registrar on 18th January, 1983, and the District Registrar, respondent No.2, has rejected the proposal. Thus the action for removal of the aforesaid members from the Society was disapproved, under order dated 9th May, 1983 made by the District Registrar. The petitioner, feeling aggrieved by the order of the District Registrar, preferred appeal under section 153 of the Act before respondent No.3. That appeal was allowed on 22nd September, 1983 and the order passed by the District Registrar on 9th May, 1983 was set aside. Consequently the resolution of the Society for removal of respondents No.4 to 17 was confirmed. Respondents No.4 and 5 preferred revision application before the State Government under section 155 of the Act, against the order of respondent No.3. The revisional authority allowed the revision application under its order dated 24th August, 1984. Hence this special civil application.

3. Shri N. D. Nanavati, learned counsel for the petitioner raised twofold contentions challenging the order of the revisional authority. Firstly the learned counsel for the petitioner submitted that the revision application has been filed only by two members, where the revisional authority has set aside the whole of the order of the District Registrar dated 9th May, 1983 and the matter has been remanded back. It has next been contended that the revisional authority has committed an error of jurisdiction in going into the facts of the matter on merits. On the other hand the counsel for the respondents contended that the revisional authority has passed just and reasonable order which does not call for interference of this court under Article 226 of the

Constitution of India. It has next been contended that under the impugned order the matter has been remanded only and as such this writ petition is not maintainable. Nothing on merits has been decided and as such it is a case where the petition under Article 226/227 of the Constitution of India is not maintainable. It has next been contended that though only two of the respondents have filed revision application, the revisional authority has suo motu powers to intervene in the matter and has passed appropriate orders and as such, on facts of the case, it has jurisdiction to pass order in favour of the respondents though many of them have not filed revision application.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The revisional authority has only remanded the matter for redeciding it after examining the case afresh. It is a case where nothing final has been adjudicated on merits by the revisional authority. I find sufficient merits in the contention raised by the learned counsel for the respondents that writ petition under Article 226/227 against the order of remand should not be entertained. The counsel for the petitioner has failed to show how any prejudice is caused to the petitioner by the order impugned in this special civil application. It is a case where substantial number of members were ordered to be removed from the membership of the Society. The observations which have been made by the revisional authority in its order, impugned in this special civil application, are of very serious nature. It is a case where a fair and reasonable approach has not been made and the society appears to be bent upon to remove those members from membership. It is a case of removal of members from the society, and as such adequate care should be taken that the members are given sufficient opportunity of hearing to make their defence. As the matter has been remanded back for fresh decision I do not consider it proper to go into the merits of the matter. Whatever observations made in this judgment will not have any bearing on the merits of the matter and the authority to which the matter is remanded back will decide the same in accordance with law, taking into consideration the observations made by the revisional authority. Looking to the facts of the case I do not consider it to be a fit case where this court should interfere with the order passed by the revisional authority. I do not find any failure of justice in the present case to the petitioners, and as such exercise of jurisdiction under Article 226/227 of the Constitution is not warranted.

5. In the result this writ petition fails and the same is dismissed. Rule discharged. Interim relief granted earlier stands vacated. No order as to costs.

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